

AFFIDAVIT OF JOHN P. KELLEHER

STATE OF NEVADA            )  
  ) ss:  
COUNTY OF CLARK         )

John P. Kelleher, being duly sworn upon oath, deposes and says:

1. I am an attorney licensed to practice law in the State of Nevada;
2. That I am submitted this affidavit in the Case of State v. Trafford & Shepherd, Case No: Case No. C-11-277573-1, to correct material misrepresentations of fact made by counsel for the Defendants in their Motion to Dismiss the case.
3. While I have not read the Defendant’s Motion to Dismiss, I have been informed that Defense Counsel is basing their Motion to Dismiss in part, on allegations that I engaged in alleged “prosecutorial misconduct,” in my handling of the case, due to an alleged “conflict of interest,” which the Defense erroneously claims was the basis for my presenting this case to the Grand Jury in November of 2011.
4. The allegations of personal bias and my alleged improper motives for the investigation and presentment of the case to the grand jury are false, blatantly misleading to the court and factually inaccurate. As such, I am submitting this affidavit in order to inform the Court of the “actual” facts leading up to the reasons for the Attorney General’s investigation and presentation of the case to the Grand Jury.
5. That I was formerly employed by the Nevada Attorney General’s office from April 2003, until May 2012, at which time I voluntarily resigned my employment to pursue other business interests.
6. In approximately August of 2007, Nevada Attorney General Catherine Cortez Masto appointed me to organize and head up the Nevada Attorney General’s newly created Mortgage Fraud Strike Force, in response to the Attorney General’s office being inundated with thousands of Consumer Complaints of Mortgage Fraud and

Loan Modification scams occurring throughout the State and particularly in Clark County Nevada. In January of 2010 I was promoted to Chief of the Attorney General's Fraud Unit.

7. Prior to my appointment as Mortgage Fraud Strike Force leader and Chief of the Fraud unit, I was employed as the Assistant Chief of the Attorney General's Bureau of Consumer Protection. The majority of my case prosecutions involved felony and misdemeanor Deceptive Trade, Theft and Securities Fraud cases. I had zero experience in "mortgage fraud" and to my knowledge the Attorney General's office had never investigated or prosecuted anyone for mortgage or loan modification fraud. In fact, at the time of my original appointment to head up the Mortgage Fraud team, the crime of "mortgage fraud" did not exist on the statute books in Nevada.

8. On October 17, 2005, my wife and I purchased a new home subject to what we were told and believed was a 30 year fixed mortgage. We applied for the mortgage loan under a full document, full disclosure loan application. At the time, we specifically told the sales agent that we were not interested in an Adjustable Rate Mortgage (hereinafter "ARM") and that our plan was to sell the home we were living in at that time, and use the equity as the down payment for the new home.

9. We received correspondence informing us that we were approved for the loan but we had not yet sold our existing home, so the sales agent arranged for a second mortgage to cover our down payment until our existing home sold. This all occurred 22 months before I was appointed to head up the Attorney General's mortgage fraud team and prior to this, I had zero experience with mortgages, mortgage loans or mortgage fraud scams.

10. After taking over the AG's mortgage fraud team in August of 2007, I began educating myself in mortgage laws and began reaching out to mortgage and real

estate professionals to learn more about mortgages and the types of scams our office was receiving complaints about and how they were allegedly being perpetrated.

11. Between 2007 and 2009, the Attorney General's office began receiving thousands of consumer fraud complaints alleging that hundreds of individuals and businesses in Clark County were engaging in various loan modification scams.

12. In or around March or early April of 2009, I was speaking to a local mortgage professional who I was consulting with regarding how the loan modification process works. I was seeking a first hand account of how difficult it actually was to obtain a loan modification. I sought this information to educate myself as part of my duties in prosecuting loan modification scams and mortgage fraud scams for the Attorney General.

13. The loan specialist I was consulting with invited me to come to their office and sit in and witness first hand how difficult it was to obtain loan modifications. This was important to my education as a prosecutor, because the vast majority of companies we were receiving complaints about were "guaranteeing" they could obtain loan modifications for the victims, which we later found out was virtually impossible to guarantee.

14. In order to facilitate a call with a bank so that I could witness it, I suggested we use my loan. I was not actually attempting to obtain a loan modification. We used my loan only so that I could be authorized to sit in on the calls and witness the exchanges with the bank representatives and so I could witness first hand how the lenders were dropping callers, losing their records, routing calls to India and overseas etc.

15. When I met with the loan specialist at her office, I gave her my loan file. After flipping through it for several minutes, she showed me how my wife's income had

been fraudulently inflated on the loan application that was sent to the lender and that the loan application also falsely stated that my wife and I earned an additional \$2800 a month from "rental income" from the home we were living in prior to the purchase of our new home. These statements were made on a typewritten loan application stamped "handwritten application" which neither I or my wife ever saw. In fact, the application my wife and I actually completed was a "handwritten" application that contained the correct income information. The loan specialist also showed me papers that stated I had an Adjustable Rate Mortgage loan with a balloon payment, in complete contradiction to the paperwork I received originally when I purchased the loan stating we were applying for and receiving a 30 year fixed mortgage.

16. There were also signatures in the file that were forged. The servicer on my loan at that time was Saxon Mortgage and I had obtained the loan through GMAC. The loan specialist and I called Saxon mortgage together and inquired whether they had a copy of the bogus "lease" that the realty company who prepared my paperwork claimed was included in the closing file. The Saxon representative told me that there was no lease in their copy of the loan file but that it should have been in the records sent to them by the realty company who prepared the loan documents. As no such lease ever existed, either a fraudulent one was created by the person who prepared and submitted the bogus loan application or, that person false stated that such a lease existed even though that statement was false. Either way, my loan was obtained due to criminal fraud on the part of the realty company that submitted my loan application to the lender. As an officer of the court I emphatically state that the fraudulent information on my loan file was prepared by and submitted to the lender by someone at the realty company, who forged our names to the paperwork and submitted a typed written loan application stating a higher income and

requesting an ARM loan rather than a 30 year fixed loan, so that they could earn higher fees, instead of submitting the actual loan application we completed with the correct information under a 30 year fixed mortgage. If in fact my wife and I did not qualify for the 30 year fixed loan, it is my position that we should have been told that, so that we could have remained in our original home, in which we had equity.

17. After discovering this fraud, I hired a private law firm to file a lawsuit but unfortunately, by the time I discovered that my wife and I had been the victims of mortgage fraud, the company that prepared and submitted the fraudulent loan documents to the lender had gone out of business and filed for bankruptcy and the individual who prepared the paperwork could no longer be located. As such, it was pointless for me to continue with the civil suit.

18. I then filed a Consumer Complaint for Mortgage Fraud with the Nevada Attorney General's office and immediately informed Attorney General Masto of the above related facts.

19. After reviewing my consumer complaint, the Attorney General's office declined to investigate and prosecute my consumer complaint because they did not want to create a conflict of interest, as I was the Chief of their mortgage fraud unit. I spoke with prosecutors at the US Attorney's office as well, but at that time, they were inundated with ongoing cases and did not have the manpower available to take on a new investigation.

20. As the AG's office and the US Attorney's office were the only prosecuting agencies handling mortgage fraud complaints in Nevada at that time and neither office was able to handle my case, I decided to simply let the matter drop and attempt to negotiate a loan modification through my lender.

21. I spoke with someone at Saxon mortgage who informed me that since I was current on my payments, they could not discuss a loan modification with me until

and unless I was at least 90 days in arrears. Based on this and the fact that I had no apparent recourse either civilly or criminally, my wife and I decided to stop making payments in the hopes that we could work out a loan modification in the future.

22. On November 18, 2010, my wife and I received a "Notice of Intent to Accelerate" from our loan servicer Saxon. **(Exhibit 1)**

23. On November 30, 2010, my wife and I received a letter from Saxon in response to our request to apply for a loan modification under the "Making Home Affordable Program," which letter included an application to apply for the program, which we completed and submitted to Saxon. To our knowledge, GMAC was the lender at that time. **(Exhibit 2).**

24. On January 5, 2011, my wife and I received a letter from Saxon stating: "Due to your failure to honor your commitment in making your monthly mortgage payments, we have initiated foreclosure proceedings on your mortgage loan." **(Exhibit 3).** This letter proves that my home was going into foreclosure through Saxon on behalf of GMAC a full eleven (11) months prior to my presentation of the above referenced case to the grand jury in November of 2011 and a year before I had any knowledge that any of the companies associated with the Defendants had anything to do with my mortgage loan.

25. Along with the letter of January 5, 2011, was another application for the Making Home Affordable Program, which we completed and submitted for a second time.

26. We did not receive any response from Saxon until June 1, 2011, at which time we received a letter stating: "We received a written request on the above-referenced loan. Please expect a response to your request soon....There is no need to respond to this letter as it is an acknowledgment of your written request." **(Exhibit 4).** As such, at the time the subject matter case was being investigated in

the summer of 2011, I was under the impression that my request for a loan modification through Saxon was being considered. I had zero knowledge that my loan would be or had been transferred to Bank of America and/or foreclosed upon through the Defendant's employer.

27. I am disclosing the historic time line regarding my personal loan situation to correct misstatements of fact that I believe may have been made in Defendants Motion to Dismiss and to show that at no time during this time period was I aware, informed of or did I have any knowledge that my loan had been or was going to be later transferred to any companies associated with or affiliated in any way with the Defendants in the subject matter case.

28. In fact, as late as October 17, 2011, a full month "before" the subject matter case had been presented to the grand jury, I received a "Notice of Election to Mediate" from Quality Loan Services, whom I understood was then servicing the loan for Saxon on behalf of GMAC, in response to my requesting mediation through the Nevada Supreme Court Mortgage Mediation Program in the hopes that my wife and I could still negotiate favorable terms with the lender and remain in our home.

**(Exhibit 5).**

29. I personally did not learn that our loan had been transferred to Bank of America or that it was being handled by LSI Title until the week after Tracey Lawrence's death. While I have been told that the Defendants submitted a Notice of Default prior to that time, I never personally saw such notice until approximately December 2011, when I was gathering together documents for my upcoming mortgage mediation. It was at that time, that I also researched the trust history to find out how and when Bank of America and particularly LSI Title became connected with my loan.

30. While I no longer have access to the Attorney General's file in this case, I do recall that I believe I searched "EDGAR," the data base used to record filings with the Securities & Exchange Commission and discovered that my loan had allegedly been transferred into a Mortgage Stanley/Bank of America Trust, Trust No. 2006-16AX and that the transfer occurred almost 4 years after the trust had closed in violation of Remic Trust and securities law and was allegedly done by Realty Mortgage almost 2 years after Realty Mortgage had gone out of business due to bankruptcy. Based on my experience as a Mortgage Fraud and securities fraud prosecutor, this would make the transfer to Bank of America into a "closed" trust illegal and a transfer done by what we called in the industry a "dead man" company, would also be both factually impossible and totally illegal. As such, it is my opinion that any claim by Bank of America and subsequently by their servicer LSI Title to foreclose on my home is based on criminally fraudulent transfers and is therefore and illegal foreclosure. While I no longer recall the exact dates of these transfers, the information can easily be obtained by the Attorney General's investigators if they choose to research it.

31. After informing Attorney General Mastro of these facts, she decided that as I was prosecuting a case involving Defendants who worked for LSI Title, and as my team at the time was beginning to investigate and focus on securities fraud violations in connection with mortgage backed securities, a conflict of interest existed in my continuing to head up the team, as I was apparently the victim of multiple instances of mortgage fraud and foreclosure fraud. Attorney General Mastro therefore, decided to transfer me from the Mortgage Fraud Division to head up her newly created Cyber-Crime task force in May of 2012.

32. In June of 2012, I decided to resign my position with the Attorney General's office in order to pursue other business opportunities.

33. As an Officer of the Court I emphatically attest and declare that at no time during the investigation or presentation of the subject matter case to the Grand Jury was I aware that LSI Title was in any way involved with my personal mortgage loan.

34. As an officer of the Court, I attest and declare that my decision to investigate and prosecute the subject matter case was due solely and exclusively to the fact that the Attorney General's office had uncovered tens of thousands of fraudulent filings with the Clark County Recorder's office, a large majority of which involved LSI Title and falsified notarizations made at the direction of the Defendants, which potentially could have undermined the public's reliance on the credibility and integrity of the County's public recordings.

35. After a thorough investigation by the Attorney General's Mortgage Fraud Strike Force investigators, a decision to pursue charges against the Defendants was made solely and exclusively based upon the weight of the evidence discovered in the course of that investigation which in my professional opinion, was sufficient to present to the grand jury.

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36. After presenting the case and evidence to the Grand Jury, a true bill was returned on November 15, 2011.

37. These are the facts to the best of my recollection and knowledge.

Further Your Affiant Sayeth Naught,

DATED this \_\_\_\_\_ day of December, 2012.

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John P. Kelleher, Esq.

SUBSCRIBED and SWORN to before

Me this \_\_\_\_\_ day of December 2012.

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Notary Public for Said County and State